
Study To Determine the Appropriate State Agency To Oversee the Regulation of Adult Residential Care Homes and Adult Foster Homes

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 02-22
December 2002



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

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OVERVIEW

Study To Determine the Appropriate State Agency To Oversee the Regulation of Adult Residential Care Homes and Adult Foster Homes

Report No. 02-22, December 2002

Summary

Adult residential care homes and adult foster homes are important options for people who are unable to care for themselves and require living assistance. The State is responsible for ensuring that these individuals are provided adequate care in a safe environment. Adult residential care homes are licensed by the Department of Health to provide 24-hour living accommodations to elderly or disabled adults for a fee. Similarly, adult foster homes regulated by the Department of Human Services provide 24-hour living accommodations for a fee to the elderly, chronically ill, disabled, developmentally disabled, and mentally retarded. “Regular” adult residential care homes provide minimal living assistance. Adult foster homes provide a higher nursing level of care that may include intravenous injections, tube feeding, and oxygen administration. “Expanded” adult residential care homes may also provide such higher care as well to a limited population.

During the 2002 Regular Session, the Legislature identified potential inefficiency regarding the Department of Health’s regulation of adult residential care homes and the Department of Human Services’ responsibility for making payments for Medicaid clients who live in those homes. The Legislature also noted that the Department of Human Services—not the Department of Health—regulates adult foster homes and concluded that perhaps a single government agency should oversee all aspects of adult residential care homes and adult foster homes.

We considered several regulatory options but found that maintaining the current regulatory scheme for adult residential care homes and adult foster homes is the most appropriate alternative. Transferring adult residential care home and adult foster home regulation to either the Department of Human Services or the Department of Health would raise a number of regulatory issues and concerns that would need to be addressed. For example, if adult foster home regulation were transferred to the Department of Health under the premise that it does not fit within the Department of Human Services’ mission, then the appropriateness of DHS’ other regulatory responsibilities would be placed in question.

We also found that overlap between the Department of Human Services and the Department of Health would continue even if regulation were consolidated under the Department of Health. As the single state agency designated to administer the federal Medicaid program, the Department of Human Services would continue to have some oversight responsibility for its Medicaid clients in both types of homes. The department would also continue to monitor the services provided to its clients, make visits to all homes the clients are placed in, and administer Medicaid payments to these clients. Consolidating regulatory responsibility would allow



care home operators who also become adult foster home operators to charge the higher of both the medical services and room and board rates—\$2,380 per month instead of \$1,730 per client.

Furthermore, we found that adult foster home regulation by the Department of Human Services via case management agencies is inappropriate and poses a potential conflict of interest. The conflict of interest arises because the case management agencies are given the authority to both certify adult foster homes and expanded adult residential care homes and then place their clients in those homes. This conflict is exacerbated by the requirement some case management agencies impose upon adult foster homes and expanded adult residential care homes to enter into exclusive agreements with them in order to receive client placements. This type of agreement does not guarantee that potential clients of adult foster homes and expanded adult residential care homes will be equitably distributed between the two.

Finally, we found that the oversight mechanisms for the Department of Human Services' regulatory system are weak. The administrative rules do not require the department to make monthly or annual inspections of case management agencies or the homes that subcontract with the agencies. In addition, while the case management agencies are required to approve the monthly invoices of their subcontractors before payment is made, the administrative rules do not require subcontractors to certify that their case management agencies are in fact providing monthly services to the clients placed in the homes or to the homes themselves.

Recommendations and Responses

We recommended that the Departments of Health and Human Services continue to regulate adult residential care homes and adult foster homes, respectively. We also recommended the Department of Human Services manage its regulatory functions more appropriately by reevaluating the use of case management agencies to certify adult foster homes and ensuring case management agencies are adequately monitored.

The Department of Health had no comments regarding the overall recommendations of our report but offered technical points of clarification. The Department of Human Services did not disagree with our findings but defended its use of case management agencies to certify adult foster homes and the agencies' practice of requiring exclusivity provisions in their contracts with adult foster homes.

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Submitted by

THE AUDITOR
STATE OF HAWAII

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Foreword

This is a report of our study to determine the appropriate state agency to oversee the regulation of adult residential care homes and adult foster homes. This study was conducted pursuant to Senate Concurrent Resolution No. 37, Senate Draft 1, of the 2002 Regular Session. The resolution requested the Auditor to determine the appropriate state agency to oversee both the funding and regulation of adult residential care homes and adult foster homes.

We wish to express our appreciation for the cooperation and assistance extended to us by the Department of Health, the Department of Human Services, and others whom we contacted during the course of the study.

Marion M. Higa
State Auditor

Table of Contents

Chapter 1 Introduction

Background	1
Objectives	4
Scope and Methodology	5

Chapter 2 Regulatory Consolidation Would Be Problematic But Case Management Needs Attention Under Any Circumstances

Summary of Findings	8
Although Consolidation Within the Department of Human Services Is Not Feasible and the Department of Health Has a Clear Regulatory Function, Transferring Responsibilities Raises Several Issues	9
Current Regulation of Adult Foster Homes by Case Management Agencies Under Contract With the Department of Human Services Presents a Conflict of Interest	19
Conclusion	22
Recommendations	22

Responses of the Affected Agencies 23

List of Exhibits

Exhibit 2.1	Health Facilities Licensed by the Office of Health Care Assurance	10
Exhibit 2.2	Care Giver Requirements for Expanded Care Homes and Adult Foster Homes	14
Exhibit 2.3	Medicaid Waiver Service and Room and Board Rates for Expanded Adult Residential Care Homes (ARCH) and Adult Foster Homes	19

Chapter 1

Introduction

During the 2002 Regular Session, the Legislature recognized that adult residential care homes (care homes) and adult foster homes are important options for people who require living assistance. As a result, the Legislature noted that the State has a compelling interest to ensure that care homes and adult foster homes are properly regulated and deliver safe, quality, low cost care in the most efficient manner possible. However, the Legislature identified potential inefficiency regarding the Department of Health's regulation of care homes and the Department of Human Services' responsibility for making payments for Medicaid clients who live in those homes. Furthermore, since the Department of Human Services—not the Department of Health—regulates adult foster homes, the Legislature concluded that perhaps a single government agency should oversee all aspects of care homes and adult foster homes.

As a result of these concerns, the Legislature passed Senate Concurrent Resolution No. 37, Senate Draft 1, of the 2002 Regular Session. The resolution requested that the Auditor conduct a study to determine the appropriate state agency to oversee both the funding and regulation of care homes and adult foster homes. The Legislature also requested the Auditor to recommend an integrated management strategy for care homes and adult foster homes and propose amendments to the existing law if necessary.

Background

During the 1960s, public support for community-based health and social services strengthened as state mental hospital patients were deinstitutionalized, and efforts to contain medical costs grew. As a result, small residential board and care homes were developed as alternatives to state institutional care facilities. The need to monitor and regulate these facilities became apparent when a growing number of confirmed reports of neglect and abuse of board and care home residents, and a series of boarding home fires in the 1970s, came to light.

In 1978, the State began to regulate adult care homes and adult family boarding homes. Act 107, Session Laws of Hawaii (SLH) 1978, required all adult family boarding homes to be licensed by the Department of Human Services. The act also required all adult care homes to be licensed by the Department of Health. In 1985, responsibility for overseeing adult family boarding homes was also transferred to the Department of Health through Act 272, SLH 1985. Adult care homes and adult family boarding homes were subsequently combined and

renamed “adult residential care homes” in 1986. Licensing and monitoring of such homes remained the Department of Health’s responsibility.

***The Department of
Health regulates adult
residential care homes***

Section 321-15.6, Hawaii Revised Statutes (HRS), requires the Department of Health to license all adult residential care homes statewide to ensure the ongoing health, safety, and welfare of their residents. This responsibility is carried out through the department’s Office of Health Care Assurance, which manages state licensing and federal certification of medical and health care facilities (including care homes), agencies, and services.

The Office of Health Care Assurance is divided into the Federal Medicare Certification and the State Licensing Sections. The Federal Medicare Certification Section is responsible for implementing an agreement the State has with the national Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or HCFA). The purpose of the agreement is to provide continuing oversight of certified health care facilities. The section ensures that quality care is being delivered, and that participating health care facilities are meeting standards as a condition of participating in Medicare. The section also enforces mandatory state licensing and regulation of hospitals, nursing homes, and home health agencies. The section comprises 20.7 authorized positions, including one Medicare certification officer, ten registered professional nurses, two public health nutritionists, one medical technologist, two social workers, one secretary, and four clerk typists. In FY2000-01, the section was appropriated about \$1.6 million in federal funds.

The State Licensing Section is responsible for promulgating licensing rules and developing standards regarding quality of care in community-based facilities that must be licensed by the State but are not certified for Medicare participation. Such facilities include care homes, expanded care homes, special treatment facilities, developmentally disabled domiciliary homes, and assisted living facilities. The licensing section is also responsible for maintaining a registry of licensed care homes in the state. The section comprises 12 authorized positions, including nine registered professional nurses, one public health nutritionist, one clerk typist, and one secretary. In FY2000-01, the section was appropriated \$898,688 in general funds.

As of March 2002, there were 542 licensed care homes in Hawaii with a total capacity of 2,882 residents. There were also 137 licensed expanded care homes with a total capacity of 722 residents.

Adult residential care homes provide minimal living assistance

Adult residential care homes provide 24-hour living accommodations to elderly or disabled adults for a fee. These individuals are not related to the care home operators. Care home residents require minimal assistance with various activities of daily living, such as dressing, bathing, and eating, but are not so impaired that they require intermediate care level services.

The types of adult residential care homes are multi-tiered

There are currently three categories of care homes permitted by state law: Type I, Type II, and expanded. Type I care homes are limited to a maximum of five unrelated persons. Type II care homes can have six or more people including, but not limited to, mentally ill, elderly, handicapped, developmentally disabled, or totally disabled persons who are not related to the home operator or its staff. Expanded care homes may admit individuals who previously lived at home, in a hospital, or in other care settings and were either:

1. Admitted to a Medicaid waiver program and determined by the Department of Human Services to require nursing facility level care to manage their physical, mental, and social functions; or
2. Certified by a physician or advanced practice registered nurse as needing nursing facility level of care and are able to pay for expenses independently.

Expanded care homes are further categorized into two types, Type I and Type II. Type I expanded care homes consist of five or fewer residents with no more than two requiring nursing facility level of care. Type II expanded care homes consist of six or more residents with no more than 20 percent of the home's licensed resident capacity requiring nursing facility level of care. Additional nursing facility level residents may be allowed at the Department of Health's discretion. Examples of nursing facility level of care include intravenous injections, tube feeding, and oxygen administration.

***The Department of
Human Services
regulates adult foster
homes***

Adult foster homes are authorized under Section 346D-2, HRS, which permits the Department of Human Services to create Medicaid waiver programs that provide comprehensive home and community-based services for aged, chronically ill, disabled, developmentally disabled, and mentally retarded individuals who require acute, skilled nursing, or intermediate care facility levels of care. The waiver programs' intent is to provide a broad range of services not otherwise available under the

Medicaid state plan. Under Section 346D-1, HRS, adult foster homes and care homes are acceptable residential alternatives for participants in the home and community-based services waiver program.

Adult foster homes provide, for a fee, 24-hour living accommodations, including personal care and homemaker services, for not more than two adults who require nursing facility levels of care and are unrelated to the foster family. One bed in each adult foster home located in a county with a population of 500,000 or more must be reserved for a Medicaid recipient. As of November 2002, there were approximately 329 certified adult foster homes in Hawaii.

Adult residential care and foster home facilities do not receive state funding directly

Type I care homes are private, for-profit businesses licensed by the State. While a good number of their residents receive financial assistance from the state and/or federal governments, care home operators receive no direct government subsidies. Some Type II care homes are nonprofit entities, but they are also private businesses and receive no direct government subsidies. Therefore, fees charged by home operators are not government controlled. Similarly, adult foster homes also render services for payment and receive no direct government subsidies.

However, clients of the Department of Health or Department of Human Services placed in care homes and adult foster homes generally have limited financial resources. These residents can qualify to receive monthly payments of federal and state assistance. Payments can consist of Medicaid and federal supplemental security income for low-income elderly and disabled and are based upon the level of care needed by the individual. To qualify for federal or state financial assistance, individuals must meet certain income requirements as established by the federal Centers for Medicare and Medicaid Services and the state Department of Human Services.

Objectives

1. Identify whether there are any pertinent issues regarding transferring adult residential care home and adult foster home regulation to one state agency.
2. Assess the alternatives for regulatory oversight of adult residential care homes and adult foster homes.
3. Make recommendations as appropriate.

Scope and Methodology

We reviewed pertinent laws, statutes, audits, reports, studies, and program materials of the Departments of Health and Human Services that related to the regulation of adult residential care homes and adult foster homes. We examined applicable state statutes and administrative rules that would be affected by shifting care home and foster home oversight responsibilities to the Department of Health or the Department of Human Services. We also assessed the resources needed to effectuate such a shift in responsibilities.

Fieldwork included interviews with representatives from the Department of Health, Department of Human Services, and the Executive Office of Aging. We spoke with representatives from the Hawaii Coalition of Care Home Administrators, Alliance of Residential Care Administrators, United Group of Home Operators, and the Big Island Adult Residential Care Home Association. We also spoke with representatives from the Adult Foster Home Association of Hawaii, Centers for Medicare and Medicaid Services, as well as care home regulatory officials from Nevada and Arizona.

Our work was performed from June 2002 through August 2002 in accordance with generally accepted government auditing standards.

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Chapter 2

Regulatory Consolidation Would Be Problematic But Case Management Needs Attention Under Any Circumstances

Various care alternatives for the elderly, disabled, and other adults unable to care for themselves include adult residential care homes (care homes) and adult foster homes. Operational responsibility for this care is currently split between the Department of Health and the Department of Human Services. Care home operators have alleged that the Department of Health's regulatory requirements for adult residential care homes are unfairly more stringent than the Department of Human Services' requirements for adult foster homes. The Legislature also noted that efficiency dictates that a single agency oversee all aspects of both homes.

To study this issue further, we examined several regulatory alternatives. These alternatives included:

1. Regulation of both care homes and adult foster homes by the Department of Health;
2. Regulation of both adult foster homes and care homes by the Department of Human Services;
3. Partial regulation of adult foster homes by the Department of Health whereby the Department of Human Services would continue to monitor its clients and administer the federal Medicaid program; and
4. Leaving the current regulatory scheme intact.

We found, first, that although the regulatory requirements for the two homes are disparate, they are not unfairly so. Adult foster homes, certified by the Department of Human Services, are *homes* that are client-focused and cannot take in more than two people at any given time. In comparison, care homes, licensed by the Department of Health, are health care *facilities* that have the capacity to care for larger populations. It is therefore reasonable that care home regulatory requirements be more extensive than those for adult foster homes.

Second, we found that transferring regulatory responsibility to one agency would not eliminate the overlap that exists between the two departments. As the State's Medicaid administrator, the Department of Human Services is required to administer federal payments for Medicaid clients in both care homes and adult foster homes. This responsibility,

which includes monitoring services provided to Medicaid clients, would not change even if the Department of Health were to assume responsibility for regulating adult foster homes. Notwithstanding this continued overlap, we found that the Department of Health would be the more appropriate agency to assume regulatory responsibility for both homes. Moreover, if regulation of adult foster homes were transferred from the Department of Human Services to the Department of Health, the appropriateness of the Department of Human Services' other regulatory activities would then have to be addressed.

We concluded that the current regulatory scheme for adult residential care homes and adult foster homes is the most appropriate alternative. However, we found that the Department of Human Services' reliance on case management agencies, not its own departmental personnel, to certify adult foster homes has created a potential conflict of interest that should be addressed if the current regulatory scheme continues.

Summary of Findings

1. Maintaining the current regulatory scheme for adult residential care homes and adult foster homes appears appropriate. Transferring adult residential care home and adult foster home regulation to either the Department of Health or the Department of Human Services would raise a number of regulatory issues and concerns that would need to be addressed.
2. Adult foster home regulation by the Department of Human Services via case management agencies is inappropriate and poses a potential conflict of interest.

Although Consolidation Within the Department of Human Services Is Not Feasible and the Department of Health Has a Clear Regulatory Function, Transferring Responsibilities Raises Several Issues

Certifying adult foster homes is already within the Department of Health's purview

Designating a single state agency to oversee the regulation of care homes and adult foster homes could streamline government operations and improve the efficiency of care home and adult foster home regulation. With its existing regulatory function, the Department of Health could undertake this responsibility. However, several issues should be addressed if the Department of Health ever assumes responsibility for regulating both care and adult foster homes.

These issues include a fundamental difference in regulatory philosophies of the Departments of Health and Human Services, other regulatory responsibilities of the Department of Human Services that do not fit within the department's mission, and an overlap in the current regulatory scheme for care homes and adult foster homes. In addition, the Department of Human Services' use of case management agencies and its responsibility to administer federal Medicaid funds for clients of these homes further complicates the issue of the department's regulation of adult foster homes.

The Department of Health is responsible for planning, executing, and coordinating public health and environmental health programs for all people in Hawaii. The department enforces the State's public health and environmental health laws and administers various programs to improve the delivery of health services. One such program is the department's Office of Health Care Assurance, which is responsible for licensing various health care facilities, including nursing homes and hospitals. Exhibit 2.1 details the various health facilities licensed by the Office of Health Care Assurance.

In contrast, the Department of Human Services' purpose is to provide services only to those who are least able to care for themselves. The department's responsibilities include welfare programs, vocational rehabilitation services, medical assistance, foster and childcare licensing, child welfare services, and community based support for low-income seniors and persons with disabilities. Through its home and community based services, the department provides eligible individuals, at the nursing level of care, with the opportunity to live in assisted living facilities, adult foster homes, or expanded care homes. The department is responsible for protecting the health and welfare of these individuals and ensuring they receive all necessary personal and medical services. Regulating the adult foster homes these individuals are placed in is not within the defined purpose or functions of the department.

Exhibit 2.1

Health Facilities Licensed by the Office of Health Care Assurance

TYPE OF FACILITY	DESCRIPTION
Adult Day Health Centers	Provide an organized day program of therapeutic, social, and health services for adults with physical and/or mental impairments that require nursing oversight or care.
Adult Residential Care Homes	Provide 24-hour living accommodation, for a fee, to adults unrelated to operators. Type I: five or fewer residents; Type II: six or more residents.
Expanded Adult Residential Care Homes	Provide 24-hour living accommodations for adults at nursing facility level of care in established care homes. Type I: five or fewer residents with no more than two at nursing facility level; Type II: six or more residents with no more than 20 percent of the residents at nursing facility level.
Developmental Disabilities Domiciliary Homes	Provide 24-hour living accommodations for no more than five unrelated adults with mental retardation or developmental disabilities. Clients must be determined eligible by the Department of Health's Developmental Disabilities Division.
Assisted Living Facilities	Provide a combination of housing, meal services, health care services, and personalized support services designed to respond to individual needs.
Small Intermediate Care Facility for Mentally Retarded	Facilities comply with established federal standards for developmentally disabled clients.
Nursing Facility	Facilities comply with established federal standards for 24-hour nursing supervision and care.

Source: Departments of Health and Human Services

Based on their differing missions, the Department of Health appears to be the more appropriate agency to certify and regulate adult foster homes. The regulatory nature of this activity aligns more appropriately with the health department's mission to monitor, promote, protect, and enhance the health and environmental well being of all of Hawaii's people—than with that of the human services department. In addition, the health department already regulates other health facilities as detailed in Exhibit 2.1. It therefore follows that the department could also certify adult foster homes more appropriately than case management agencies, whose focus is on home clients and operators. However, several issues must be addressed prior to such a move.

Although consolidating regulation with the Department of Health is reasonable, issues that would arise make it problematic

While the Department of Health appears to be the more appropriate agency to regulate adult foster homes, transferring responsibility for regulating those homes to the Department of Health raises a number of issues and concerns. For example, care homes and adult foster homes are currently regulated under two significantly different philosophies, which affect the standards to which the homes are held. In addition, if the Department of Human Services no longer regulated adult foster homes, we would then have to question the appropriateness of its other regulatory activities.

We also recognize that under the current regulatory scheme for care homes and adult foster homes, a certain amount of overlap exists between the functions of the two departments. Transferring adult foster homes to the Department of Health may not eliminate this overlap. Following such a transfer, the Department of Human Services would still retain responsibility for administering the federal Medicaid funds paid to care home and adult foster home clients. Finally, the Department of Human Services' use of case management agencies to regulate adult foster homes further complicates the prospect of single-agency regulation.

The Department of Health's regulatory philosophy differs significantly from that of the Department of Human Services for justifiable reasons

We found a fundamental difference between the approaches used by the Departments of Health and Human Services to regulate care homes and adult foster homes, respectively. While the Department of Health follows a detailed set of administrative rules and regulations to license care homes and other health care facilities, the Department of Human Services follows a "social model of health care" which focuses more on the client than the facility. Many operators of care homes allege that the rules governing the regulation of adult residential care homes are much more stringent than the rules for adult foster homes. They expressed

concern that it is much easier for an adult foster home to become certified to operate than it is for a care home to be licensed to operate. One health department official acknowledged that there are additional regulatory requirements in the administrative rules for care homes. However, the licensing requirements for care homes were established to ensure the safety and well being of the facilities' residents. If regulation of adult foster homes were transferred to the Department of Health, the requirements governing those homes would need to be evaluated, and possibly revised, for parity with adult residential care home rules.

The Department of Health's rules can be found in Hawaii Administrative Rules (HAR) Title 11, Chapters 100 (Adult Residential Care Homes) and 101 (Expanded Adult Residential Care Homes). The purpose of Chapter 100 is to establish minimum requirements for the licensure of care homes to protect the health, welfare, and safety of residents in care homes. The rules have 24 sections that address such general areas as licensing; personnel and staffing requirements; general staff requirements; admission policies; food service; general operational policies; medications; plan of care; recreational, rehabilitative programs, and social services; resident health care standards; and physical environment. Chapter 100 also specifies the standards that care homes must comply with in such topics as fire safety, temperature control, windows, doors, lighting, waste disposal, storage space, dayrooms/living rooms, bathrooms, bedrooms, floor space, and bedroom furnishings.

The specificity of the requirements is illustrated below:

- Type I care homes must have 36-inch wide corridors (in homes that have a resident who requires the use of a wheel chair, the corridors must be 48 inches wide);
- Type II care homes must have 8-foot wide corridors;
- Handrails in all care homes must be 32 inches high; and
- Shower floor space must be a minimum of 16 square feet and the width of the shower entrance must be 32 inches.

In addition to the Department of Health's specific requirements, Type I and II care homes must comply with county building code requirements.

Chapter 101 details additional health department requirements that expanded care homes must meet to receive licensure. These requirements include provisions for swimming pool safety, resident signaling devices, interior door locks, and interior stairways. For example, swimming pools located on an expanded care home's property must have a solid pool cover with a key lock approved by the department

or a 6-foot high fence with a key-locked gate that completely encloses the pool. In addition, expanded care homes must have department-approved signaling devices to be used by residents at bedside, in bathrooms, and other areas where expanded care residents may be left alone.

In addition, the Department of Health is currently proposing to replace its administrative rules for adult residential care homes and expanded adult residential care homes to include more stringent requirements. In some cases, the proposed rules would add new compliance requirements for the homes.

For example, the department's proposed administrative rules would require that fire extinguishers meet minimum classification ratings and be installed in accordance with the National Fire Protection Agency's life safety code. Current administrative rules on fire extinguishers state only that the number and size of extinguishers be determined by the local fire department. In addition, the proposed rules would require Type I care homes with wheelchair residents to have walk-in showers flush with the floor, whereas this requirement is not listed in the existing rules. These types of changes could present additional construction costs to operators of care homes and expanded care homes.

In contrast to the health department's regulations, the Department of Human Services' administrative rules for adult foster home regulation focus more on the client than the home in which the client resides. Human services department officials maintain that their regulation of adult foster homes ensures their clients are in a safe environment and are receiving all necessary services. Departmental officials maintain that the "social model of health care" they follow promotes the individuality, dignity, choice, independence, and privacy of residents in a home-like atmosphere. The model also provides for inclusion of the resident, his or her family, and surrogate in the development of the resident's schedule of activities and in all decision-making affecting the resident.

Title 17, Chapter 1454, HAR, details the Department of Human Services' certification requirements for adult foster homes. While the health department's structural requirements for care homes are numerous and detailed, the human services department has only 12 requirements for certified adult foster homes. We found that the rules for adult foster homes address general areas of the home, such as the bathroom, bedroom, living room, and other common areas. The rules also necessitate the provision of case management services, such as assessing clients, planning and coordinating services, performing quality assurance reviews, and monitoring services to clients. Unlike foster homes, the provision of case management services is not a requirement of care home licensure under Chapter 100.

We also found considerable differences between the requirements to become a licensed expanded adult residential care home operator and a certified adult foster home operator. Exhibit 2.2 illustrates some of the more stringent requirements that expanded care home operators must meet under the Department of Health's rules.

Exhibit 2.2

Care Giver Requirements for Expanded Care Homes and Adult Foster Homes

Expanded Care Home Care Giver Requirements (Department of Health)	Adult Foster Home Care Giver Requirements (Department of Human Services)
<ul style="list-style-type: none"> • Must be a qualified nurse aide or licensed nurse • One year experience working full-time in an intermediate care facility, skilled nursing facility, home health agency, or hospital • Attend and complete two training sessions per year as recommended by the department • Complete care home teaching modules approved by the Department of Health • Six months experience operating as a care home 	<ul style="list-style-type: none"> • Must be a qualified home health aide, nurse aide, licensed professional nurse, or registered nurse • No previous work experience requirement • Twelve hours of in-service training per year • None • None

Source: Departments of Health and Human Services

The Department of Human Services has other regulatory responsibilities that would need to be assessed

The mission of the Department of Human Services is to direct its resources towards protecting and helping those least able to care for themselves and to provide services designed for clients' achieving self-sufficiency as quickly as possible.

Although the department does not have a mandated regulatory responsibility, we found that it does regulate a number of facilities. In addition to regulating adult foster homes, the department is responsible

for regulating child placing organizations, child caring institutions, foster boarding homes, day care centers for disabled and aged persons, group child care homes, group child care centers, and family child care homes.

For example, according to Section 346-17, HRS, no child placing organization may investigate, place, or supervise minor children unless it meets the standards of conditions, management, and competence set by the department. The department issues certificates of approval to organizations, institutions, and homes that meet its established standards. Section 346-17, HRS, also specifies that child caring institutions shall not be allowed to receive minor children unless they meet standards set by the department. Foster boarding homes also cannot care for any child unless they meet standards set by the department. Under Section 346-83, HRS, the department is also responsible for recruiting and licensing day care centers for elderly disabled and other aged persons. In addition, Section 346-161, HRS, requires the department to license group childcare homes and centers. Finally, under Section 346-171, HRS, family childcare homes may not operate unless the department registers them.

Authority for regulating adult foster homes could be transferred to the Department of Health under the premise that this activity does not fit within the Department of Human Services' mission. However, if this were done, then the appropriateness of the human services department's regulation of child placing organizations, child caring institutions, foster boarding homes, day care centers for disabled and aged persons, group child care homes, group child care centers, and family child care homes should also be reevaluated.

The current use of case management agencies to regulate adult foster homes would need to be addressed

We found that while the Department of Health uses departmental staff to license and regulate care homes, the Department of Human Services outsources its regulation of adult foster homes. This adds an additional administrative layer to the overall regulation of adult foster homes. If adult foster home regulation were transferred to the Department of Health, continued outsourcing of this responsibility would need to be evaluated.

The Department of Human Services does not directly certify adult foster homes. Instead, it licenses case management agencies that in turn certify these homes. Act 273, SLH 2001, gave the department the authority to contract out this function. Licensed case management agency operators must be:

1. A registered nurse who has a state license, bachelor's degree in nursing, and two years work experience in client care coordination responsibilities; or
2. A licensed social worker who has a master's degree in social work and one year of work experience with client care coordination responsibilities.

Licensed case management agencies must also have staff with at least one year of experience providing care coordination for elderly or disabled individuals in home and community-based settings. Once licensed by the Department of Human Services, case management agencies certify adult foster homes and expanded adult residential care homes that care for Department of Human Services' clients who are placed in homes under the Medicaid Residential Alternative Community Care Program.

This care program provides individuals at the nursing level of care an opportunity to live in assisted living facilities, adult foster homes, or expanded adult residential care homes. To participate in the program, an individual must:

1. Be Medicaid eligible;
2. Be certified at the nursing facility level of care (intermediate care facility or skilled nursing facility);
3. Voluntarily elect to receive Medicaid waiver program services in lieu of institutional placement; and
4. Not exceed current average state financial expenditures for long-term care services in a nursing facility or hospital.

Adult foster homes and expanded care homes enter into contracts with licensed case management agencies to provide residential care services (personal care, homemaker, chore, transportation, companionship, etc.) to individuals admitted into the program. These agencies also provide client assessment and residential placement through "placement matching" to assure compatibility and quality of care for the client through contracts with the care program. The case management agency develops and executes service plans for clients, monitors and reassesses clients, and conducts quality assurance and utilization reviews to ensure that needed services are being provided.

During FY2001-02, the Residential Alternatives Community Care Program placed 647 clients in adult foster homes and expanded care homes and spent approximately \$12.6 million for services. As of July

2002, there were 12 case management agencies. Expenditures for case management agencies during FY2001-02 totaled approximately \$3.4 million.

Some overlap between the departments would continue to exist even if regulation were consolidated

In addition to the problems that would arise as a result of regulatory consolidation, overlap between the Departments of Health and Human Services would continue even if responsibility were transferred to the Department of Health. For example, the Department of Human Services would continue to have some oversight responsibility for its Medicaid clients in both adult foster and adult residential care homes. The department would continue to monitor the services provided to the clients and make visits to all homes in which the clients are placed. In addition, the department would continue to administer the Medicaid payments to clients in both kinds of homes.

The Department of Human Services would maintain oversight of its Medicaid clients wherever they are placed

Both the Departments of Health and Human Services oversee expanded adult residential care homes. According to Section 321-15.62, HRS, the Department of Health licenses expanded adult residential care homes to ensure the well-being of the individuals placed in the homes. The Department of Human Services also has a form of regulatory oversight because some of the expanded care home residents are departmental clients.

For example, Department of Human Services clients who participate in the Residential Alternative Community Care Program can choose to be placed in either an adult foster home or an expanded care home. Therefore, expanded care homes that care for Department of Human Services clients are not only required to meet the Department of Health's licensing requirements but also the Department of Human Services' certification requirements.

The Department of Human Services administers federal Medicaid funds for clients of both care homes and adult foster homes

The Department of Human Services is also designated the single state agency to administer funds for the federal Medicaid Program in accordance with the national Social Security Act. Clients of both expanded care homes and adult foster homes are eligible for Medicaid assistance if they are at a nursing facility level of care. Clients must also meet certain income requirements. For example, a single person may not have more than \$2,000 in assets to qualify for Medicaid assistance.

The department is responsible for meeting certain requirements to comply with the federal Medicaid program. According to standards issued by the Centers for Medicare and Medicaid Services, states must demonstrate that quality assurance systems have been designed and implemented for Medicaid waiver participants. Even if the Department of Health were to assume responsibility for regulating adult foster homes, the Department of Human Services would still be required to monitor the services provided to Medicaid clients and visit the homes where those clients are placed.

Medicaid clients in both types of homes pay comparable rates for medical services and room and board

Although Medicaid pays for all health-related services, it does not pay for room and board. The rates of payment for Medicaid services differ according to a client's level of care and the type of home in which the client is placed. A foster home operator may receive either \$42 (Level I clients) per day or \$58 (Level II clients) per day from the Department of Human Services to provide personal care and homemaker services. In comparison, expanded care home operators receive \$23 (Level I) per day or \$39 (Level II) per day for providing the same services.

On the other hand, although expanded care homes receive lower payments for the medical services they provide to Medicaid waiver clients, the amount they can charge for room and board is substantially higher than the amount adult foster homes can charge. Type I expanded care homes charge Medicaid clients \$1,066 per month for room and board. In comparison, adult foster homes charge their Medicaid clients \$418 per month for room and board—a difference of \$648 per month. Exhibit 2.3 extrapolates the Medicaid service and room and board rates on a monthly basis.

Department of Human Services officials report that the difference in the payment rate for health-related services exists because expanded care homes can charge a higher rate for room and board for Medicaid residents than can adult foster homes. Therefore, under the current regulatory scheme, the total monthly charges allowable for Level I care including health care and room and board are comparable between the two types of homes—\$1,766 for expanded care homes and \$1,732 for adult foster homes. However, if regulation were consolidated, it would then be possible for expanded care homes to become certified as adult foster homes. This “hybrid” home could then charge a Level I client's medical services as an adult foster home and the client's room and board as an expanded care home. Under this circumstance, the hybrid home could charge and receive from each Level I client \$2,380 monthly—\$600 more than it would have been able to charge as either an expanded care home or an adult foster home.

Exhibit 2.3**Medicaid Waiver Service and Room and Board Rates for Expanded Adult Residential Care Homes (ARCH) and Adult Foster Homes**

	Level I Care			Level II Care		
	Type I Expanded ARCH	Adult Foster Home	Difference	Type I Expanded ARCH	Adult Foster Home	Difference
Daily charge (medical only)	\$22.58	\$42.38	\$19.80	\$38.66	\$58.46	\$19.80
Monthly charge (medical only)	\$699.98	\$1,313.78	\$613.80	\$1,198.46	\$1,812.26	\$613.80
Monthly charge, room and board	\$1,066.00	\$418.00	\$648.00	\$1,066.00	\$418.00	\$648.00
Total Monthly Charge (medical plus room and board)	\$1,765.98	\$1,731.78	\$34.20	\$2,264.46	\$2,230.26	\$34.20

Source: Department of Human Services

Current Regulation of Adult Foster Homes by Case Management Agencies Under Contract With the Department of Human Services Presents a Conflict of Interest

The Department of Human Services' regulation of adult foster homes presents a conflict of interest and has resulted in a potentiality for fraud and abuse to occur. The conflict arises from giving case management agencies, which place clients in adult foster homes and expanded care homes, the department's authority to also certify those homes.

This conflict is exacerbated by the *requirement* imposed by some case management agencies for adult foster homes and expanded care homes to enter into *exclusive* agreements with them in order to receive client placements.

Even more alarming, the administrative rules outlining the establishment of case management agencies do not prevent adult foster home or care home owners/operators from becoming licensed case management agencies themselves as long as the primary and substitute caregivers are not related to the case manager. This situation only increases the likelihood for a conflict of interest to arise.

The Department of Human Services' use of case management agencies to certify adult foster homes presents a potential conflict of interest

We found a potential conflict of interest in the Department of Human Services' use of case management agencies to certify adult foster homes and expanded care homes that participate in the Residential Alternatives Community Care Program. A conflict exists because the case management agencies represent both the interests of adult foster homes and expanded care homes (with whom they subcontract), and the Medicaid waiver clients they place inside such homes. It is unclear which group's interests take priority.

Case management agencies are paid to ensure that Medicaid clients receive all of their necessary services in a safe and healthy environment. Because each home can accommodate only up to two clients, case management agencies also have a vested interest in certifying homes so that there is sufficient bed space available to place their clients. Therefore, case management agencies could easily certify adult foster homes solely with the interest of increasing their client bases and the attendant revenues they receive.

Case management agencies provide a range of services to Medicaid clients and home operators

Case management agencies provide a wide array of services to Medicaid waiver clients who are placed in adult foster homes and expanded care homes. These services include making initial client assessments; developing and authorizing service plans; coordinating and monitoring services provided to clients; reassessing clients; and assuring that clients' rights are protected.

Case management agencies also provide services to adult foster home and expanded care home operators. These services include providing training in the roles and responsibilities of the care givers, conducting psychosocial assessments of the care givers, assuring care givers possess the necessary skills to care for Medicaid clients, assuring the safety of the home, and conducting ongoing training to the care givers.

Case management agencies are paid up to \$565 per month, or \$18 per day, per client, to provide these services. In FY2001-02, the Department of Human Services spent approximately \$3.4 million on case management services. Adult foster home or expanded care home operators who also assume the duties of a case management agency could then increase their revenues accordingly for clients placed in their homes or facilities.

Many case management agencies require exclusive contracts with adult foster homes

In addition to case management agencies' previously-mentioned conflict of interest, many such agencies also require the adult foster and expanded care homes with whom they subcontract to enter into exclusive agreements, whereby the homes can receive clients referred only from the agency with whom they have an agreement.

We found that seven of the 12 case management agencies licensed by the Department of Human Services have such exclusivity provisions in their contracts. This situation is concerning, because it does not guarantee that Medicaid clients will be distributed equitably among expanded care homes and adult foster homes. In fact, several of the case management agencies we spoke with said that they preferred to work with adult foster homes as opposed to expanded care homes.

Department of Human Services officials report that case management agencies' use of exclusivity requirements is justified because the agencies spend a great deal of time and resources on training home operators. We question the merits of the department's argument. As one case management agency representative noted, caregivers in adult foster homes and expanded care homes are, at minimum, trained nurse aides; thus, they should already possess the skills necessary to care for their clients.

Oversight of case management agencies by the Department of Human Services is weak

The oversight mechanisms for the Department of Human Services' regulatory system are weak. For example, the administrative rules for adult foster homes do not require the department to make monthly or annual inspections of case management agencies or the homes that subcontract with the agencies, although department officials report that they evaluate the services provided by case management agencies and make random visits to clients placed in the homes. Moreover, the rules do not require equal accountability of case managers and their subcontractors. The rules *do* mandate that case management agencies approve their subcontractors' monthly invoices before payment is made, to ensure that the services were provided. However, the rules *do not* require subcontractors to certify that their case management agencies *are* providing monthly services either to the clients placed in the homes or to the homes themselves. We note that officials from the Department of Human Services report their current regulatory scheme is adequate and that they see no problems with the existing system.

The department's use of case management agencies to certify adult foster homes and expanded care homes does not adequately protect the interests of the individuals placed in the homes. Inadequate monitoring

and oversight by the Department of Human Services, case management agencies, and their subcontractors increase the potential for fraud and abuse of state resources and Medicaid funds.

Conclusion

The Department of Health is the more appropriate agency to handle the regulation of adult residential care homes and adult foster homes. This regulatory function fits in well with the health department's mission and its current activities. However, transferring the regulation of adult foster homes from the Department of Human Services to the Department of Health would not eliminate the overlap that exists between the two departments. In addition, there are a number of issues that merit consideration prior to transferring this regulatory oversight responsibility.

If the Department of Health were to assume regulatory oversight of adult foster homes, the Department of Human Services would continue to provide case management services to Medicaid clients in adult foster homes and expanded care homes, and should determine whether this case management function should continue to be administered by licensed case management agencies or be transferred to department staff. Additionally, as the single state agency designated to administer the State's Medicaid program, the Department of Human Services would continue to administer payments for Medicaid-related services to its clients. This responsibility fits within the department's mission.

Recommendations

1. The Departments of Health and Human Services should continue to regulate adult residential care homes and adult foster homes, respectively.
2. The Department of Human Services should manage its regulatory functions more appropriately. Specifically, the director of the Department of Human Services should:
 - a. Ensure case management agencies are adequately monitored to ensure the protection of its clients; and
 - b. Reevaluate its use of case management agencies to certify adult foster homes.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted drafts of this report to the Department of Health and the Department of Human Services on December 6, 2002. A copy of the transmittal letter to the Department of Health is included as Attachment 1. A similar letter was sent to the Department of Human Services. The responses of the Department of Health and Department of Human Services are included as Attachments 2 and 3, respectively.

The Department of Health responded with no specific comments regarding the overall recommendations of the report, but did offer technical points of clarification.

In its response, the Department of Human Services asserted that case management agencies are adequately monitored and that the agencies' authority to certify adult foster homes does not put the health and safety of its clients in peril. In addition, the department believes that our study implies that adult residential care homes are better than adult foster homes because care homes adhere to physical structure regulations. However, our report only points to the numerous differences in licensing and certification requirements for adult residential care homes and adult foster homes without concluding that one is better than the other.

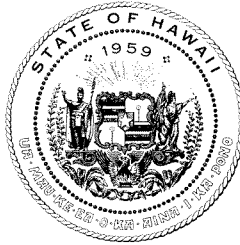
The department also noted that adult foster and adult residential care home operators cannot become licensed case management agencies because case managers cannot provide, or be related to an individual who provides, care to an adult residential care home or adult foster home client. However, we note that if adult foster and residential care home operators hire non-related caregivers, they could then become licensed case management agencies.

The department also maintains that case management agencies' use of exclusivity provisions in their contracts with adult foster homes and adult residential care homes is justified because nurse aides, without additional training, are not qualified to operate an adult foster home. However, if the department believes that nurse aides lack the appropriate qualifications to operate adult foster homes before the homes are certified, then the department may want to consider raising the requirements to operate an adult foster home.

The department offered other technical points of clarification. Minor changes were made to the report for purposes of accuracy or style.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor
(808) 587-0800
FAX: (808) 587-0830

December 6, 2002

COPY

The Honorable Loretta J. Fuddy
Acting Director of Health
Department of Health
Kinau Hale
1250 Punchbowl Street
Honolulu, Hawaii 96813

Dear Ms. Fuddy:

Enclosed for your information are three copies, numbered 6 to 8 of our confidential draft report, *Study to Determine the Appropriate State Agency to Oversee the Regulation of Adult Residential Care Homes and Adult Foster Homes*. We ask that you telephone us by Tuesday, December 10, 2002, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, December 16, 2002.

The Department of Human Services, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

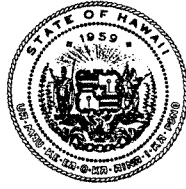
Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
ACTING DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File: 1169

December 13, 2002

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DEC 16 1 51 PM '02

OFFICE OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for the opportunity to review the draft report, Study to Determine the Appropriate State Agency to Oversee the Regulation of Adult Residential Care Homes and Adult Foster Homes. Although the Department of Health has no comments regarding the overall recommendations, there are points of clarification relating to information gathered to determine the recommendations.

On page 2, due to budgetary restrictions, the State Licensing Section has lost one public health nutritionist and two clerk typists positions, thus the accurate position count is 12 authorized positions. Also, for the Medicare Section, there are vacancies in two clerk typist and one public health nutritionist positions.

On page 12, the required corridor widths for wheelchair residents is 48 inches, which was amended through a policy directive dated June 23, 1999.

On Page 13, as per Title 11 Chapter 101, §11-101-8 (e) "licensee shall submit an acceptable plan explaining how the extended care ARCH shall obtain the services of a registered nurse and case manager." There is a requirement that an RN and case manager be obtained who is "not related to the licensee or staff of the extended care ARCH who plans, locates, coordinates, and monitors comprehensive services to meet the individual resident's needs."

On Page 14, as per §11-101-8 (h)(2) the "Type I extended care ARCH shall provide a primary care giver who shall be a nurse aide or licensed nurse." A licensed nurse per the definition in §11-101-2 "means a person who is licensed as a practical nurse (LPN) or a registered professional nurse (RN) in the State of Hawaii pursuant to chapter 457, HRS."

Ms. Marion M. Higa
Page 2
December 13, 2002

Should there be any questions or concerns please contact Dianne M. Okumura, Acting Chief, Office of Health Care Assurance at 586-4080.

Again, thank you for the opportunity to submit clarification which I hope will add to the comprehensiveness and correctness of the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Loretta J. Fuddy", with a stylized, flowing script.

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Acting Director of Health

LINDA LINGLE
GOVERNOR



PATRICIA MURAKAMI
ACTING DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

December 17, 2002

RECEIVED

DEC 17 10 44 AM '02

OFFICE OF THE AUDITOR
STATE OF HAWAII

MEMORANDUM:

TO: Ms. Marion Higa, State Auditor

FROM: Patricia Murakami, Acting Director

SUBJECT: DRAFT REPORT: STUDY TO DETERMINE THE APPROPRIATE
STATE AGENCY TO OVERSEE THE REGULATION OF ADULT
RESIDENTIAL CARE HOMES AND ADULT FOSTER HOMES

We have reviewed the draft report, Study to Determine the Appropriate State Agency to Oversee the Regulation of Adult Residential Care Homes and Adult Foster Homes. In response, the Department of Human Services asserts that case management agencies (CMAs) are adequately monitored and that the agencies' authority to certify adult foster homes in no way imperils the health and safety of our clients. We would like to submit the following comments for your consideration:

1. The study correctly states that adult foster homes, under DHS, are client-focused while care homes, under DOH, are health care facilities. DOH care home regulations pay particular attention to the physical environment of care homes, and though it is implied in the study, there are no collaborating studies to support that care homes are better because they adhere to regulations governing physical structure. DOH care homes are monitored only once a year and unlike DHS that is able to make unscheduled visits, DOH must always schedule their visits. H.A.R. §17-1454-41 (i)(1) authorizes the Department as well as the CMA to conduct visits, with or without prior notice, of the foster home for the purpose of client monitoring, investigation and quality review.
2. Annual evaluations of the case management agencies are being performed as required under the following circumstances:
 - a. Act 273 requires the Department to evaluate licensed CMAs annually or biennially, or upon receipt of a complaint.

- b. CMAs that contract to serve Department clients are evaluated on a yearly basis. Currently, all licensed CMAs are under contract with the Department.

Both the licensing evaluation and the contract quality assurance evaluation require visits with a sampling of certified foster homes and their clients by monitors from the Department.

- 3. In addition to the annual evaluations, H.A.R. §17-1454-30 requires the Foster Family Homes to report all adverse events to the CMA within 24 hours of occurrence. The CMA is then mandated to report the event to the program specialist in the Department. It should be noted that a review of Adult Protective Services confirmed cases from February to November 2002 disclosed that the confirmation rate of 2% is the same for both foster family homes and care homes.
- 4. On page 19, the study notes the administrative rules do not prevent home operators from becoming licensed CMAs themselves. H.A.R. §17-1454-2 defines the term case manager as follows:

"an individual **other than and not related to the caregiver** that locates, coordinates, and monitors comprehensive services to meet a resident's needs." (The emphasis is ours)

- 5. On page 21, the study notes that seven of the 12 licensed CMAs use exclusivity provisions in their contracts with adult foster homes, and this does not guarantee that Medicaid clients will be distributed equitably among expanded care homes and adult foster homes. The Department does not consider equitable distribution of Medicaid clients as one of its primary responsibilities. Placement is based on client choice and needs, and as noted on page 11 of the study, the Department adheres to a social model of health care that focuses more on the client than the facility.

CMAs licensed by the Department of Human Services assume risk and liability for placements. They assure the client has chosen the placement and the skills competency of the foster home provider is appropriate to the client's needs upon admission and on a continuing basis. They are also required to visit the client at least once a month. On-going training and continuous assessment of the skill level of the foster family home provider is also a CMA responsibility. This model parallels that of the child welfare foster care model in which child placement agencies license specific homes for which they are exclusively responsible. It should be noted that this model has been approved by the federal Centers for Medicare and Medicaid

Services as an acceptable practice to assure the health and welfare of the Waiver recipients. In contrast, the Department of Health has no comparable requirements for monthly case management visits and oversight and training of the caregiver.

Further, regarding exclusivity, the study questioned the Department's response that it is justified because the CMAs spend a great deal of time and resources on training to assure the on-going skill competency of the foster family home operators. The Department asserts the contractual as well as regulatory requirements of a foster family home are complex, and a nurse aide, without additional training, could not readily be an adult foster home operator.

6. The Department asserts that the CMA and Foster Home Program models the public/private partnership that maintains the Department's ultimate authority without significant increases in staff and administrative costs and all the while, establishes and implements standards for the continued health and welfare of the people served.
7. Corrections:
 - a. As of November 2002, there are 329 Community Care Foster Family Homes. The 434 figure on page 4 of the study includes care homes that participate in the Waiver program.
 - b. The program will allow contracts with Assisted Living Facilities but CMAs do not regulate them— page 16 of the study.


Acting Director